



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

Crl.O.P (MD) . No.14472 of 2015

and

MP (MD) Nos.1 and 2 of 2015

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A.Elamathi ... Petitioner/1st Accused

Vs

1.The State of Tamil Nadu

Rep. by The Inspector of Police,
Thirumangalam Town Police Station,
Madurai District.

(Crime No.45 of 2013)

... Respondent No.1/Complainant

2.Selvakumar ... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records pertaining to C.C.No.68 of 2015, on the file of the learned Judicial Magistrate, Thirumangalam and quash the same in so far as the petitioner is concerned.

[C.C.Number Amended as per the order of this Court dated 19.06.2017 made in Crl.M.P. (MD) No.3290 of 2017 in Crl.O.P. (MD) No.14472 of 2015]

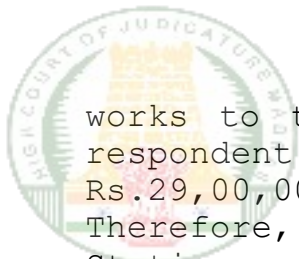
For Petitioner : Mr.R.Sundar Srinivasan

For Respondents : Mr.A.Robinson
Government Advocate (Crl. Side)
for (R1)
No Appearance (for R2)

ORDER

The petitioner herein is facing trial in C.C.No.68 of 2015, on the file of the learned Judicial Magistrate, Thirumangalam, for the offences under Sections 406 and 420 of IPC. The other accused is in the said case is said to be no more. The second respondent is the de-facto complainant.

2.The case of the second respondent is that there was a construction agreement between the petitioner and himself. The petitioner was the owner of the property in question. He appears to have purchased an old house. As per the agreement between the parties, the petitioner must pay a sum of Rs.19,67,000/- for carrying out demolition and construction of a new house. It was further agreed that if any extra work was done by the de-facto complainant, the petitioner will have to pay corresponding extra amount. It is claimed that the de-facto complainant had carried out



works to the tune of Rs.35,38,950/-. The grievance of the second respondent is that the petitioner paid him only a sum of Rs.29,00,000/- and that a sum of Rs.6,38,950/- is still due to him. Therefore, he lodged complaint before the Thirumangalam Town Police Station. Crime No.45 of 2013 was registered. Investigation was undertaken and final report came to be filed. Cognizance of the offences was taken by the learned Judicial Magistrate against the petitioner and the another accused. To quash the same, this petition has been filed.

3.Even though the second respondent has been served and his name is printed in the cause title, there is no appearance on his behalf.

4.As rightly contended by the petitioner's counsel, the case on hand is essentially a commercial transaction. The petitioner is the owner of the property. The de-facto complainant is the contractor. Even according to the contractor, the substantial sum of money has already been paid to him. The amount agreed to be paid in the written contract admittedly has been paid. If there is any dispute regarding the exact quantum to be paid as the balance consideration, the same will have to be resolved elsewhere. The question of fastening penal liability on the petitioner does not arise at all. It cannot be the case of the second respondent, that the petitioner had a dishonest intention at the inception. If that be so, the petitioner would not have paid a sum of Rs.29,00,000/-. The very filing of the criminal case is an abuse of legal process. Elementary ingredients of the offences in question are not present in this case. Therefore, the impugned prosecution stands quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sjj

To

1.The Judicial Magistrate, Thirumangalam.

2.The Inspector of Police,
Thirumangalam Town Police Station,
Madurai District.



3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-95382[F] dated
01/11/2019)

Cr1.O.P(MD) . No.14472 of 2015
30.10.2019

KG (CO)
TR(30.01.2020) 3P 5C